



STATE OF DELAWARE

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August 15, 2017

**TO:** The Chair and Members of the Commission

**FROM:** Joseph DeLosa III */s/*  
Public Utility Analyst

**SUBJECT:** IN THE MATTER OF THE APPLICATION OF CHESAPEAKE UTILITIES CORPORATION FOR APPROVAL OF THE ISSUANCE OF COMPANY STOCK AND LONG TERM DEBT. (FILED JULY 18, 2017). – PSC DOCKET NO. 17-0695

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**Application:**

On July 18, 2017, Chesapeake Utilities Corporation (“Chesapeake” or the “Company”) submitted an application (“Application”) to the Delaware Public Service Commission (“PSC” or “Commission”) pursuant to 26 *Del. C.* § 215 requesting approval for the issuance of up to \$100,000,000 of Chesapeake long-term debt securities (“LTD”) and the issuance of up to \$200,000,000 in common stock. On August 8, 2017, in Order No. 9097 the Commission determined that (i) good cause existed to extend the 30-day approval period<sup>1</sup> to provide Commission Staff (“Staff”) additional time to evaluate the application; and (ii) the docket would be considered at the August 22, 2017 meeting. If the Application is approved, the Company anticipates using the proceeds to increase its capacity under an existing shelf<sup>2</sup> arrangement as authorized by PSC Order No. 8770 (Aug. 4, 2015), and to fund known capital expenditures and future capital projects in the next year and beyond.

Chesapeake’s expected capital expenditures for 2017 are forecasted to be primarily investments in its regulated natural gas distribution and transmission business segments totaling \$241 million. The Application also explains that “additional equity and debt will

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<sup>1</sup> See 26 *Del. Admin. C.* §§ 1001-1.9.2 and 1002-1.2.

<sup>2</sup> An agreement between a lender and a borrower whereby the lender agrees to make funding available to the borrower, but is under no obligation to provide a specific amount of money. The interest rate on each funding is determined at the time of the request and is based on market conditions at the time of funding.

be needed to finance capital expenditures of approximately \$300 million for the years 2018 through 2020, primarily for the Company's regulated energy segment as well as to consummate acquisitions and investments that align with the Company's strategic plan."<sup>3</sup> Additionally, the Application explains that depending on the timing of these capital requirements and funding of the new issue debt, the Company may utilize the proceeds to "pay down a portion of its debt outstanding under its short-term revolving lines of credit previously utilized... to fund working capital requirements and capital projects."<sup>4</sup> The Company has requested Commission approval at this time because it intends to execute a note agreement within the next few months.

The LTD will be used to increase the Company's capacity under their existing shelf arrangement, while the common stock issuances will be used to fund known capital expenditures and future capital projects as noted above.

According to the Application, Chesapeake's Board of Directors ("BOD") "has yet to provide final authorization for the issuance of the requested \$100 million in additional [LTD] and \$200 million of new common stock equity. The [BOD] has authorized the Company to request this approval from the PSC for the additional debt and equity issuances."<sup>5</sup> Chesapeake believes the LTD issuance will be competitive, with interest rates at or below 5.0%, and with less than a 0.5% premium for any delayed drawdown.<sup>6</sup>

The Company maintains that the private placement of LTD with insurance companies continues to be an attractive source of funding. The Company believes the new debt issuance will have terms and conditions similar to its most recent note agreements, which were provided by the Company in compliance with PSC Order No. 8770 (Aug. 4, 2015).

Lastly, Chesapeake is requesting approval to issue approximately 2,857,143 shares of voting common stock (post-split)<sup>7</sup> for a total of \$200,000,000. These funds will be used for capital improvements as mentioned above. The Company believes any common stock issuances will be well received by investors; the Application bases its calculation on a \$70 share price for the Company's voting common stock.

### **Staff's Review:**

Staff performed a review of the Application and additional supporting documents provided by the Company for accuracy and completeness. The mathematical calculations of the schedules provided in the Application were also reviewed. Staff has calculated the before and after issuance of the debt to equity rates and summarized the percentages in the chart below.

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<sup>3</sup> Application at ¶ 6.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at ¶ 8.

<sup>6</sup> *Id.*

<sup>7</sup> See Application, Attachment A at 2. See also PSC Order No. 8654 (Oct. 14, 2014).

	After Issuance Authorized – Order No. 8770 <sup>8</sup>	After Requested Issuance in this Docket 17-0695
Debt Percentage	57.61%	52.4%
Equity Percentage	42.39%	47.60%

The Company has represented that this debt issuance is consistent with its current debt covenants which limit the level of unsecured debt to total capitalization to 65%.<sup>9</sup>

Staff has also reviewed a copy of a legal opinion dated July 14, 2017, by Parkowski, Guerke & Swayze (the “Firm”) for Chesapeake regarding the legality of the proposed issuance of up to \$200 million of voting common stock and up to \$100 million in LTD. This opinion represented that based on its knowledge of the applicable statute, 26 *Del. C.* § 215 and its legal judgement, the Firm believes that the proposed issuance of LTD and common stock for the purposes set forth in the Application is in accordance with law, subject to any necessary approval on the part of the Maryland and/or Florida Public Service Commission(s), compliance by Chesapeake with all applicable federal securities laws, and approval of Chesapeake’s BOD. This opinion also explained the limited scope of the Commission’s review of filings under § 215, as set forth by the Delaware Supreme Court in *Diamond State Telephone Co. v. PSC*.<sup>10</sup> Staff respectfully agrees with the provided assessment regarding the Commission’s review under § 215.

### **Staff’s Recommendation:**

Staff’s review indicates that the Company has complied with the filing requirements<sup>11</sup> to issue up \$200,000,000 of the Company’s voting common stock and up to \$100,000,000 in LTD pursuant to 26 *Del. C.* § 215. The Application explains that the issuance is made in accordance with law and for a proper purpose. As a result of the competitive interest rates represented by the Company and the Commission’s limited scope of review, Staff submits that the Application is consistent with the public interest. Therefore, Staff respectfully recommends that the Commission approve the Application for the aforementioned reasons and subject to the conditions that (i) Chesapeake’s Delaware Division may not construe this approval as a ratemaking treatment for future case filings; (ii) Chesapeake must obtain the prior approval of its BOD as to the actual amount of stock to be issued and the terms and conditions of any issuance as well as the actual amount of LTD to be issued and the terms and conditions of any issuance; (iii)

<sup>8</sup> Application, Schedule 1, Column titled “Pro Forma after Issuance Authorized.”

<sup>9</sup> Application, at ¶ 7.

<sup>10</sup> *Diamond State Telephone Co. v. Delaware PSC*, 367 A. 2d 644 (Del. 1976). (“...in the absence of a showing of improper consideration, fraud, bad faith or self dealing on the part of the members of appellant’s board of directors in their decision to issue shares of stock for the ostensible purpose of raising needed moneys [the Commission may not] substitute its judgment for that of a board of directors...”)

<sup>11</sup> 26 *Del. Admin C.* § 1002 – Part D.

within 30 days of the closing of the issuance of the \$100,000,000 of LTD, the Company must file copies of its fully executed note agreement for this application as well as any other documents or information required by 26 Del. Admin. C. § 1002, Part D, 4.0 with the Commission under this docket; and (iv) Chesapeake must obtain any additional necessary approvals from the Maryland and/or Florida Public Service Commission(s) and comply with all applicable federal securities laws.